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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Boris Reydel

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EXAMINER

WITCZAK, CATHERINE

ART UNIT

PAPER NUMBER

3767

MAIL DATE

DELIVERY MODE

10/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/692,310	Applicant(s) REYDEL ET AL.	
	Examiner Catherine N. Witczak	Art Unit 3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Handwritten signature and date: 10/3/07

DETAILED ACTION

Claim Objections

1. Claim 39 is objected to because of the following informalities: There is insufficient antecedent basis for "the endoscope". Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 6-21, 23, 26, 28-38 and 41-49 are rejected under 35 U.S.C. 102(b) as being anticipated by Hall (US 4,946,440).

Claim 1, 2, 6-11, 13-20, 23, 26, 29-32, 35-38, and 41-49: Hall discloses a flexible introducer member (12), a sleeve (90) having a plurality of apertures (102) with a first body portion attached to the introducer and an eversible second body portion (92) moveable in response to a second member (16) sized for introduction through the introducer member.

Claim 12: Hall discloses in column 5, line 60 that the internal passage is the duodenum.

Claims 21 and 28: Hall discloses in Figure 3 the introducer (12) including a second passageway.

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Claims 33 and 34: Hall disclose in Figure 4 a third member (84) preloaded in the passageway of the second member (16).

3. Claims 1, 3, 4, 5, 22, 23, 39, and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Bauer et al (US 5,389,089). Bauer discloses a flexible introducer member (27) positioned in a portion of an endoscope (63), a polymeric sleeve (45) with a first body portion attached to the introducer and an eversible second body portion moveable in response to a second member (43) sized for introduction through the introducer member.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 24, 25, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall as modified by Hall.

Hall discloses the claimed invention, except for disclosing expressly the length of the sleeve being at least 20 cm in length and the introducer and second members comprising catheter having lengths of at least 150 cm. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to vary the lengths of the sleeve and catheters because Applicant has not disclosed that these specific dimensions provide an advantage, are used for a particular purpose, or solve a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with a sleeve of at least 20 cm in length and catheters of 150 cm in length because these are ranges commonly used in the art. Therefore, it would have been an

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obvious matter of design choice to modify Hall to obtain the invention as specified in claims 24, 25, and 27.

Response to Arguments

5. Applicant's arguments, see Response, filed 8/8/2007, with respect to the claim objection of claims 14 and 22 have been fully considered and are persuasive. The objection of claims 14 and 22 has been withdrawn.

6. Applicant's arguments filed 8/8/2007 have been fully considered but they are not persuasive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the membrane disposed within a passageway of the second member) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). As the claims are currently written, the second end of the sleeve need only be "loadable" into the passageway of the second member. As such, both Hall and Bauer disclose devices in which the second end of the sleeve would be fully capable of: a) being loaded into the exterior of the surface (as both would still function if the sleeve were attached to the inner portion of the member as opposed to the exterior); and b) being physically pushed into (ie loaded) into the second member if the user wished to do so.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine N. Witczak whose telephone number is (571) 272-7179. The examiner can normally be reached on Monday through Friday, 8-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

 10/13/08

KEVIN C. SIMONS
SUPERVISORY PATENT EXAMINER
